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No. 05-1232

In The Supreme Court of the United States

TONY ORLANDO HUGHES,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. No rational fact finder could find Hughes guilty beyond a reasonable doubt of the alleged drug offenses because the sole evidence against the Defendant was the testimony of co-defendants.

DID THE COURT ERR IN FINDING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT WHERE THE GOVERNMENT'S EVIDENCE WAS INSUFFICIENT TO SUPPORT SUCH A FINDING.

2. It is cruel and unusual punishment to add subsequent conviction enhancement provisions of 18 U.S.C. § 924 (c) (1)(C)(1) (2000) to charges that are adjudicated and sentenced at the same event. For a charge to be considered a subsequent conviction, then a prior, separate and distinct conviction order should already exist.

DID THE COURT ERR IN ENHANCING THE APPELLANT'S GUIDELINES AS THE APPELLANT'S PRIOR CONVICTIONS WERE NOT PRESENTED TO THE JURY AND THE JURY MADE NO FINDING APPELLANT WAS PREVIOUSLY CONVICTED OF ANY CHARGES.

DID THE COURT ERR IN CALCULATING THE ENHANCED PUNISHMENT FOR SECOND AND SUBSEQUENT FIREARM CONVICTIONS WHEN THE "SECOND AND SUBSEQUENT CHARGES" WERE FINALIZED IN THE SAME TRIAL AND SENTENCING EVENT AND WERE PART OF THE SAME CONSPIRACY.

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OPINIONS AND ORDERS BELOW

The unpublished per curiam decision of October 20, 2005, by the United States Court of Appeals appears in Appendix A. The Eastern District of Virginia's unpublished Order of December 1, 2004, convicting Mr. Hughes of thirty-six counts of a sixty-seven count indictment, appears in Appendix B.

JURISDICTION

The decision and order of the United States Court of Appeals affirming Mr. Hughes' conviction was entered on October 20, 2005. Appendix A. The jurisdiction of this Court is conferred under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides, in pertinent part, that no "cruel and unusual punishments" shall be "inflicted."

STATEMENT OF THE CASE

On July 19, 2004, following a multi day jury trial, in the United States District Court for the Eastern District of Virginia, Norfolk Division, a verdict was entered against the appellant as to thirty-six counts of a sixty-seven count indictment: one count of Conspiracy to Possess with Intent to Distribute and Distribute Cocaine and Cocaine Base, in violation of 21 U.S.C. § 846 (2000); sixteen counts of the Distribution of Cocaine Base, in violation of 21 U.S.C. § 841(a) (1) and (b)(1)(A) (2000); four counts of the Distribution of Cocaine Case, in violation of 21 U.S.C. § 841(a) (1) and (b)(1)(B) (2000); two counts of the

Distribution of Cocaine Case, in violation of 21 U.S.C. § 841(a) (1) and (b)(1)(C) (2000); two counts of the Distribution of Cocaine, in violation of 21 U.S.C. § 841(a) (1) and (b)(1)(C) (2000); three counts of Possession with the Intent to Distribute Cocaine, in violation of 21 U.S.C. § 841(a) (1) and (b)(1)(B) (2000); and eight counts of Possession of a Firearm during and in relation to a Drug Trafficking Crime, in violation of 18 U.S.C. § 924 (c) (1) (2000). Hughes received a 2616-month sentence.

STATEMENT OF THE FACTS

The prosecution's evidence in this case consists of the testimony of fifteen (15) informants (JA V.1 pg. 100-351), together with each informant's plea agreement. All of these prosecution witnesses are notorious drug dealers currently (at the time of this Defendant's trial) incarcerated for Federal felony convictions after having entered plea agreements with the United States Government. All of these plea agreements call for these witnesses to cooperate with the authorities; and, all of these witnesses have cooperated and been debriefed by federal agents pursuant to the requirements placed upon these witnesses by the plea agreements.

All of these witnesses have plead guilty to their respective charges in exchange for receiving any or all of the following benefits:

1) The dismissal of at least some of their counts charged under Federal indictments;

2) The receiving of credit for "acceptance of responsibility" sentence discounts;

3) The consideration given by the prosecution and by the sentencing judge who takes the witnesses' cooperation into consideration before the sentence is pronounced; and

4) The opportunity to receive sentence reductions, both at the sentencing hearing and thereafter.

Part of these witnesses' cooperation for which they

seek or have gotten sentence reductions included telling the Government information about the Defendant and providing testimony against the Defendant, either at Grand Jury proceedings or at trial or both.

In this Defendant's trial, each of the prosecution's witnesses testified as to how they met the Defendant, how they engaged in drug transactions with the Defendant, the type of drugs and approximate amounts involved in the transactions, and whether or not the Defendant had a firearm during or in furtherance of those transaction.

The testimony of each witness will now be addressed in turn:

1) Malik Allen, incarcerated at the time of this trial, had entered a plea agreement with the United States Attorney's Office. He plead guilty to two (2) counts of a Federal indictment. If he cooperates substantially, the prosecution can file a motion to reduce his sentence. He was sentenced to 135 months to serve. Other than that felony sentence, he has about five (5) felony convictions within the last ten (10) years. He testified at this trial that he had drug transactions with the Defendant. Allen stole the Defendant's safe, which contained six (6) ounces of crack, $3,000.00, and a .25 caliber handgun. Allen stole candy from Farm Fresh and 7-Eleven by the book bag fulls and sold it at school. Pursuant to his plea agreement, the prosecution has the ability to move for a downward departure of Allen's sentence; but, to get his downward departure, Allen needs to be of substantial assistance to the Government, be debriefed, and testify. If Allen had nothing to tell the Government, then the Government would not be willing to help Allen with a downward departure.

2) Edwin Dennard, incarcerated at the time of this trial, had entered a plea agreement with the United States Attorney's Office. He was sentenced to 170 months. Pursuant to his plea agreement, the Government will consider reducing his sentence based upon his cooperation.

The reduction hasn't happened; yet Dennard hopes it will. He has been debriefed by agents, provided information, and testified. He testified at this trial that he had drug transactions with the Defendant. Dennard never actually saw the Defendant with a gun. Dennard is seeking to have his 170-month sentence reduced pursuant to his plea agreement with the Government. The plea agreement also benefited Dennard by getting a number of counts/charges he was indicted for dismissed.

3) Mr. Adrian Cook, incarcerated at the time of this trial, entered into a plea agreement with the Government, was sentenced to 125 months. Cook assisted the Government pursuant to the plea agreement; and, the Government filed a sentence reduction motion. The Sentencing Judge reduced Cook's 125-month sentence to 54 months. When Cook was debriefed by Federal Agents, one of the people he provided information about was the Defendant. Cook testified at this trial that he had drug transactions with the Defendant. Cook is a convicted felon. His 125-month sentence was reduced to 54 months because of his cooperation, part of which included telling the Government information about the Defendant.

4) Mr. Kellis Hodges, incarcerated at the time of this trial, entered into a plea agreement with the Government in 2002 and was sentenced to twelve (12) years and eight (8) months for one (1) count of Possession with Intent to Distribute Crack Cocaine. Hodges was debriefed by agents and provided information. The plea agreement provides that if Hodges gives substantial assistance, then the Government can ask the Sentencing Judge to reduce his sentence. Hodges is hoping a sentence reduction motion will be filed on his behalf. Hodges went to prison in June of 1995 for dealing drugs. He testified at this trial that he had drug transactions with the Defendant. Hodges never saw the Defendant with a gun. Hodges is a convicted felon and a drug dealer. Hodges was facing significantly more time than the twelve (12) years and eight (8) months he received if he hadn't taken the plea;

and, at least one (1) count of the indictment was dismissed as part of the plea agreement.

5) Michael Deronte Toombs, incarcerated at the time of this trial, entered into a plea agreement with the Government and agreed to cooperate with the Government as part of that plea agreement. Toombs has been debriefed by Federal Agents, provided information, and testified before a Federal Grand Jury. Toombs has been dealing drugs (crack cocaine) since he was about 16. At the time of this trial he was 24. He testified at trial that he had drug transactions with the Defendant through an intermediary. Toombs was currently serving a Federal sentence for drug distribution. Part of the reason Toombs was at trial to testify was to get a sentence reduction. If he didn't testify in this case, his sentence reduction was not going to happen.

6) William Bolton, incarcerated at the time of this trial pursuant to a Federal plea agreement, agreed to cooperate with the Government in connection with that plea agreement. After Bolton entered the plea agreement, he was debriefed by Federal Agents and gave information. Bolton has been dealing drugs since roughly 1990, the last fourteen (14) years. The Government's responsibility under the plea agreement is that if they're satisfied with the information Bolton gave, then they can help to reduce Bolton's time. His sentence reduction motion has not been filed yet. Bolton has used the names Allen Robb, Jaheem Pierce, Isaac Rabb, and Charlie Richardson. Bolton has used three (3) or four (4) other dates of births besides his own, and three (3) or four (4) other social security numbers. In 1990, Bolton was involved in dealing powder cocaine. He started out with 28 to 125 grams, from different people and different sources; but, he can't remember exactly who. He testified at this trial that he had drug transactions with the Defendant. Pursuant to the plea agreement, Bolton was sentenced to 360 months. A sentence reduction motion in the future is the reason he's cooperating with the Government. Bolton used other names

and social security numbers to get out of driving tickets and keep from going to jail.

7) Barry Desota Allen, incarcerated at the time of this trial and awaiting sentencing pursuant to his guilty plea to a crack cocaine conspiracy, is cooperating with the Government pursuant to that plea agreement. He is required to testify in any trials or before any Grand Juries. He has been debriefed and provided information about the individuals with whom he was involved in drug dealing; and, he will have more debriefings in the future. He testified at this trial that he had drug transactions with the Defendant. Allen never saw the Defendant with a gun. Allen heard the Defendant had been arrested in March of 2002 in Gloucester, but didn't know the Defendant had been continuously in jail since then. As part of his plea, Allen is hoping for consideration from the Government with regards to the sentence he will receive. Allen is hoping for a further sentence reduction after he is sentenced (for continuing to cooperate).

8) Allen Kane, incarcerated at the time of this trial in connection with a sentence he received pursuant to a plea agreement he entered with the Government, agreed to cooperate with the Government pursuant to that plea agreement. The plea agreement provides that, if the Government believes Kane's cooperation is substantial, then the Government could ask Kane's Sentencing Judge to reduce his sentence. Kane has been sentenced to 140 months. A Motion to Reduce Sentence has been filed for Kane. He has not yet received a reduction because he is waiting to complete his cooperation. Prior to Kane's entry into the plea agreement, he was debriefed by Federal Agents on four (4) or five (5) occasions and provided information about the Defendant. He testified at this trial that he had drug transactions with the Defendant. In October of 2001, Kane went to the Defendant's apartment at the Hampton Club Apartments, broke in, went upstairs, kicked the bedroom